

SERVICE DATE – LATE RELEASE OCTOBER 26, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-1081X

SAN PEDRO RAILROAD OPERATING COMPANY, LLC—ABANDONMENT  
EXEMPTION—IN COCHISE COUNTY, AZ

MOTION FOR PROTECTIVE ORDER

Decided: October 26, 2005

By motion filed on October 17, 2005, San Pedro Railroad Operating Company, LLC (SPROC) seeks a protective order under 49 CFR 1104.14 to protect certain confidential documents and information submitted in this proceeding under seal. SPROC concurrently filed a petition (confidential and public versions) seeking an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon approximately 76.2 miles of railroad line in Cochise County, AZ, as follows: (1) the Bisbee Branch, between milepost 1085.0 at Bisbee Junction and milepost 1090.6 at Bisbee, a distance of 5.6 miles; and (2) the Douglas Branch (a) between milepost 1097.3 near Paul Spur and milepost 1106.5 near Douglas, a distance of 9.2 miles, (b) between milepost 1055.8 near Charleston and milepost 1097.3 near Paul Spur, a distance of 41.5 miles, and (c) between milepost 1040.15 near Curtiss and milepost 1055.8 near Charleston, a distance of 19.9 miles.<sup>1</sup>

Good cause exists to grant the motion for protective order. Issuance of the protective order is requested by SPROC to protect certain confidential documents and information contained in the petition for exemption.

The motion conforms with the Board's rules at 49 CFR 1104.14 governing protective orders to maintain the confidentiality of materials submitted to the Board. Accordingly, the motion for protective order will be granted, and the confidential, unredacted version of the petition for exemption (including exhibits and workpapers) shall be subject to the Protective

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<sup>1</sup> SPROC sought authorization to abandon these lines by petition for exemption filed on June 6, 2005, in STB Docket No. AB-441 (Sub-No. 4X). Notice of the filing was served and published in the Federal Register on June 24, 2005 (70 FR 36696-97). By decision served on September 15, 2005, the Board denied the petition without prejudice to SPROC's filing an application or a properly supported petition for exemption under a new docket number.

Order and Undertaking contained in the Appendix to this decision.<sup>2</sup> Issuance of the protective order ensures that the railroad's confidential information will be used solely for this proceeding and not for other purposes.

It is ordered:

1. SPROC's motion for a protective order is granted, and the Protective Order and Undertaking in the Appendix to this decision are adopted.

2. The confidential, unredacted version of the petition submitted in this proceeding will be kept under seal by the Board and not placed in the public docket or otherwise disclosed to the public, unless the attached Undertaking is executed and the terms of the Protective Order are followed, or unless otherwise ordered by the Board.

3. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams

Secretary

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<sup>2</sup> A proposed protective order and undertaking were included with the motion. Except for a few minor revisions, they will be adopted.

APPENDIX

**PROTECTIVE ORDER**

1. For purposes of this Protective Order, “Confidential Information” means the financial data and all supporting documents furnished by San Pedro Railroad Operating Company, LLC (SPROC) in connection with SPROC’s petition for exemption in this proceeding.
2. Confidential Information shall be provided to any employee, agent, counsel, or consultant of any party to this proceeding only pursuant to this Protective Order and only upon execution and delivery to SPROC of the attached Undertaking. Confidential Information shall be used solely for the purpose of this and any related Board proceedings, or any judicial review proceeding arising therefrom, and not for any other business, commercial, or other competitive purpose.
3. Confidential Information shall be disclosed to a person only with the written consent of SPROC or pursuant to an order of the Board, and may be used solely in connection with this and related Board proceedings, or any judicial review proceeding arising therefrom, and provided that any such person has been given and has read a copy of this Protective Order and agrees to be bound by its terms by executing the attached Undertaking prior to receiving access to this information.
4. Any documents containing Confidential Information must be destroyed, and notice of such destruction must be served on SPROC at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom, whichever comes first.
5. If the Board retains the Confidential Information, it shall, in order to keep it confidential, treat the information in accordance with the procedure set forth at 49 CFR 1104.14.
6. If any party intends to use Confidential Information at hearings in this proceeding or in any related Board proceedings, or in any judicial review proceeding arising therefrom, the party shall submit any documents setting forth or revealing such Confidential Information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court to (i) restrict attendance at the hearing during discussion of such Confidential Information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such Confidential Information in accordance with the Protective Order. A party must simultaneously file a public version of any filing with the Board that contains confidential material.

7. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

**UNDERTAKING**

**CONFIDENTIAL MATERIAL**

I, \_\_\_\_\_, have read the Protective Order governing the filing of Confidential Information by San Pedro Railroad Operating Company, LLC (SPROC) in STB Docket No. AB-1081X, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purposes other than the preparation and preservation of evidence and argument in STB Docket No. AB-1081X or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of this order and has executed an Undertaking in the form hereof.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that SPROC shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: \_\_\_\_\_

Position: \_\_\_\_\_

Affiliation: \_\_\_\_\_

Dated: \_\_\_\_\_